

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA**

RICHARD L. MILLER,)
)
)
Petitioner,)
)
v.) Case No. CIV-21-723-PRW
)
SCOTT NUNN,)
)
)
Respondent.)

ORDER

This action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is before the Court on the Respondent's Motion to Dismiss (Dkt. 14) and U.S. Magistrate Judge Amanda Maxfield Green's Report & Recommendation (Dkt. 19), entered on June 27, 2022. The Court observes that no party has objected to the Report & Recommendation within the time limits prescribed. The Court has also reviewed the Report & Recommendation (Dkt. 19) de novo and agrees with the reasoning and conclusions therein. Therefore, the Court adopts the Report & Recommendation in its entirety.¹

¹ The Court recently considered and thoroughly addressed several of the relevant issues in an order dismissing a § 2254 petition. *See Harcourt v. Dennis*, 2022 WL 2665957 (W.D. Okla. July 11, 2022). To the extent that Miller's petition can be construed as raising a 28 U.S.C. § 2244(d)(1)(D) argument, the Court finds that Miller's petition does not fall within that provision. *See id.* at *5.

Accordingly, the Court **ADOPTS** Magistrate Judge Green's Report & Recommendation (Dkt. 19), **GRANTS** Respondent's Motion to Dismiss (Dkt. 14), and **DISMISSES** Miller's Petition (Dkt. 1).²

IT IS SO ORDERED this 21st day of July 2022.



PATRICK R. WYRICK
UNITED STATES DISTRICT JUDGE

² Before a habeas petitioner may appeal the dismissal of a section 2254 petition, he must obtain a Certificate of Appealability (COA). See *Vreeland v. Zupan*, 906 F.3d 866, 875 (10th Cir. 2018) (citing 28 U.S.C. § 2253(c)(1)(A)). A COA may issue only upon “a substantial showing of the denial of a constitutional right.” § 2253(c)(2). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Upon consideration, the Court finds the requisite showing is not met in this case. Therefore, to the extent Miller’s ability to appeal survives his waiver for failure to make a timely objection to the Report & Recommendation, a COA is **DENIED**.